UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUN 10 2016

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Michael Schimmack
D N S Enterprises of Florida, Inc.
(F/K/A Punch It Performance and Tuning, LLC)
3485 Vinyard Circle
Deltona, Florida 32738

Agent for Service of Process
Barry Clark
465 Hightower Drive
Debary, Florida 32713

Re: Notice of Violation of the Clean Air Act

Mr. Schimmack:

The United States Environmental Protection Agency (EPA) has investigated and continues to investigate D N S Enterprises of Florida, Inc., F/K/A Punch It Performance and Tuning, LLC, (collectively referred to as "Punch It") for compliance with the Clean Air Act (CAA), 42 U.S.C. §§ 7401–7671q, and its implementing regulations. As summarized in this Notice of Violation, the EPA has determined that Punch It sold parts or components for motor vehicle engines that bypass, defeat, or render inoperative elements of design of those engines that were installed by the original equipment manufacturer in order to comply with CAA emission standards. The EPA has also determined that Punch It knew or should have known that these parts or components were offered for sale or installed for such use or put to such use. Therefore, Punch It violated Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B).

Law Governing Alleged Violations

This Notice of Violation arises under Part A of Title II of the CAA, 42 U.S.C. §§ 7521–7554, and the regulations promulgated thereunder. These laws were enacted to reduce air pollution from mobile sources of air pollution. In creating the CAA, Congress found, in part, that "the increasing use of motor vehicles . . . has resulted in mounting dangers to the public health and

welfare."[1] Congress' purpose in creating the CAA, in part, was "to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population," and "to initiate and accelerate a national research and development program to achieve the prevention and control of air pollution."[2]

The EPA's allegations here concern parts or components for motor vehicles and motor vehicle engines for which EPA has promulgated emission standards.[3] The CAA requires EPA to prescribe and revise, by regulation, standards applicable to the emission of any air pollutant from new motor vehicles or new motor vehicle engines that cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare.[4] As required by the CAA, the emission standards "reflect the greatest degree of emission reduction achievable through the application of [available] technology."[5] There are specific emission standards for each of these motor vehicles and engines for each pollutant and year of manufacture.[6]

Vehicle manufacturers employ many devices and elements of design to meet emission standards. *Element of design* means "any control system (i.e., computer software, electronic control system, emission control system, computer logic), and/or control system calibrations, and/or the results of systems interaction, and/or hardware items on a motor vehicle or motor vehicle engine."[7] For example, vehicle manufacturers employ retarded fuel injection timing as a primary emission control device for emissions of oxides of nitrogen (NOx). Manufacturers also employ certain hardware devices as emission control systems to manage and treat exhaust to reduce levels of regulated pollutants from being created or emitted into the ambient air. Such devices include diesel particulate filters, exhaust gas recirculation, and selective catalytic reduction. Modern vehicles are equipped with electronic control modules (ECMs). ECMs continuously monitor engine and other operating parameters and control the emission control devices, such as the fueling strategy.

The CAA makes it a violation "for any person to manufacture or sell, or offer to sell, or install, any part or component intended for use with, or as part of, any motor vehicle or motor vehicle engine, where a principal effect of the part or component is to bypass, defeat, or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this subchapter, and where the person knows or should know that such part or component is being offered for sale or installed for such use or put to such use."[8] It is also a violation to cause any of the foregoing acts.[9]

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[1] CAA § 101(a)(2), 42 U.S.C. § 7401(a)(2).
[2] CAA § 101(b)(1)–(2), 42 U.S.C. § 7401(b)(1)–(2).
[3] *See generally* 40 C.F.R. Part 86, Subpart A (setting emission standards for these categories).
[4] CAA §§ 202(a)(1) and (3)(B), 42 U.S.C. §§ 7521(a)(1) and (3)(B).
[5] CAA § 202(a)(3)(A)(i), 42 U.S.C. § 7521(a)(3)(A)(i).
[6] *See, e.g.*, heavy-duty diesel engine emission standards at 40 C.F.R. §§ 86.004-11, 86.007-11, 86.099-11 and light-duty vehicle emission standards at 40 C.F.R. § 86.1811-04. *See also* 40 C.F.R. §§ 86.090-8 (1990 and later model year light-duty vehicles); 86.094-9 (1994 and later model year light-duty trucks); 86.001-9 (2001 and later model year light-duty trucks); 86.004-9 (2004 and later model year light-duty trucks); 86.091-10 (1991 and later model year Otto-cycle heavy-duty engines and vehicles); 86.008-10 (2008 and later model year Otto-cycle heavy-duty engines and vehicles).
[7] 40 C.F.R. § 86.094-2.
[8] CAA § 203(a)(3)(B), 42 U.S.C. § 7522(a)(3)(B).
[9] CAA § 203(a), 42 U.S.C. § 7522(a).

To ensure that every motor vehicle that may legally be sold, offered for sale, imported, delivered for introduction into commerce, or introduced into commerce in the United States (collectively, introduced into commerce) satisfies the applicable emission standards, the EPA runs a certification program. Under this program, the EPA issues certificates of conformity (COCs), thereby qualifying motor vehicles and motor vehicle engines, for introduction into the commerce.[10] To obtain a COC, a manufacturer must submit a COC application to the EPA for each engine family and each model year in which it intends to manufacture or import motor vehicles for introduction into commerce. The COC application must include, among other things, identification of the covered engine family, a description of the motor vehicle and its emission control systems, all auxiliary emission control devices (AECDs) and the engine parameters they sense, as well as test results from a test engine showing that the engine satisfies the applicable emission standards.[11]

Alleged Violations

Based on evidence gathered during an inspection on August 4, 2015, of Punch It, Punch It manufactured, offered for sale, and sold software and hardware designed for use on motor vehicles manufactured by the Ford Motor Company (Ford) and General Motors Company (GM) from January 1, 2013, to August 4, 2015. Punch It sold hardware that the end user could program with software to disable the elements of design that motor vehicle manufacturers employ to meet emission standards. Punch It also created software that it either sent directly to end users or installed on hardware manufactured by other entities (e.g., SCT Holdings, Inc.). Punch It's software or hardware products were called (among other things) "Ford 6.4 Competition Tune," "Ford 6.7 Competition Tune," "SCT Tuners with Competition Tunes," "LMM Custom Programmer (P/N 100CLMM)," "SCT Livewire TS (P/N 5015C67)," "SCT 7015 Competition Tuner (P/N 7015C64)," "SCT 7015 Competition Tuner (P/N 7015C67)," "EGR Delete Kit."

A principal effect of these products is to bypass, defeat, or render inoperative elements of the engine design that control emissions of regulated air pollutants. Punch It rendered inoperative the original engine manufacturers' software (insofar as it received input from hardware used as emission control devices) and replaced it with its own software that allowed the vehicles to function without inputs from emission control devices. Based on Punch It's advertising, the products increase engine power and fuel economy. As stated above, emission control hardware (including exhaust gas recirculation devices and exhaust aftertreatment devices) are elements of design that manufacturers employ to meet emission standards.

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[10] 40 C.F.R. § 86.007-30.

[11] 40 C.F.R. §§ 86.004-21, 86.007-21, 86.094-21, 86.096-21; *see also* EPA, *Advisory Circular Number 24-3: Implementation of Requirements Prohibiting Defeat Devices for On-Highway Heavy-Duty Engines* (Jan. 19, 2001).

The Punch It software and hardware described above are identified in the table below:

PRODUCT	EFFECT ON EMISSION CONTROL DEVICES	QUANTITY
All products below are programmed with software created by Punch It Performance: Custom Tuning for your device, 6.4L Diesel (64LXTR) Ford 6.4L Diesel Custom Programmer (300C64) SCT SF3 Power Flash Ford Programmer (P/N 3015C64) SCT Livewire TS (P/N 5015C64) SCT X4 Power Flash Ford Programmer (P/N 7015C64)	For Ford 6.4 L Diesel (Model Year 2008-2010): override on-board diagnostic (OBD) codes to facilitate removal of diesel oxidation catalyst (DOC), diesel particulate filter (DPF), and exhaust gas recirculation (EGR)	5,512
All products below are programmed with software created by Punch It Performance: Custom Tuning for your device, 6.7L Diesel (67LXTR) SCT SF3 Power Flash Ford Programmer (P/N 3015C67) SCT Livewire TS (P/N 5015C67) SCT X4 Power Flash Ford Programmer (P/N 7015C67)	For Ford 6.7 L Diesel (Model Year 2011+): override OBD codes to facilitate removal of DOC, DPF, EGR, and SCR system.	3,045

All products below are programmed with software created by Punch It Performance: LMM Custom Programmer (P/N 100CLMM)	For GM 6.6 L Diesel (Model Year 2007.5-2010): override OBD codes to facilitate removal of DOC, DPF, and EGR	376
Rudys 64 EGR with Elbow	EGR disable or removal	34
Rudys 67 EGR with Hose	EGR disable or removal	12
	TOTAL	**8,979**

Punch It knew or should have known that these products were offered for sale or installed in order to bypass, defeat, or render inoperative devices or elements of design that control emissions of regulated air pollutants. The products replaced the original engine manufacturers' ECMs insofar as they overrode the on-board diagnostics to bypass, defeat, or render inoperative emission control devices. Punch It's advertising stated,

> "From the factory, your vehicle's computer is calibrated for the masses, designed with the average driver in mind, not the performance enthusiast. This not only leaves valuable Horsepower & Torque hidden inside your vehicle, but it also makes for a mediocre driving experience. The Livewire TS unlocks your vehicle's hidden performance by recalibrating your vehicle's computer for Maximum Horsepower & Torque, Increased Throttle Response, Firmer Shifts and even Increased Fuel Mileage."

Furthermore, Punch It knew or should have known that these products were offered for sale or installed on "motor vehicle engines." Many products were designed and marketed for use on a specific make, model, and year of Ford or GM motor vehicle. Ford and GM obtained COCs from the EPA for these motor vehicles. This certification unequivocally demonstrates that these engines are "motor vehicle engines" because that is a product category for which manufacturers must obtain a COC.

Enforcement

The EPA may bring an enforcement action for these violations under its administrative authority or by referring this matter to the United States Department of Justice with a recommendation that a civil complaint be filed in federal district court.[12] Persons violating Section 203(a)(3)(B) of the

[12] CAA §§ 204 and 205, 42 U.S.C. §§ 7523 and 7524.

CAA, 42 U.S.C. § 7522(a)(3)(B), are subject to an injunction under Section 204 of the CAA, 42 U.S.C. § 7523, and a civil penalty of up to $3,750 for each violation.[13]

The EPA is available to discuss this matter with you in further detail, upon your request. Please contact Lauren Tozzi, the EPA attorney assigned to this matter, within 10 days of receipt of this Notice of Violation. Ms. Tozzi can be reached at (202) 564-4904 or Tozzi.Lauren@epa.gov.

Sincerely,

Phillip A. Brooks
Director
Air Enforcement Division
Office of Civil Enforcement

[13] CAA § 205(a), 42 U.S.C. § 7524(a); 40 C.F.R. § 19.4.